

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

OCT 31 2018

JAMES W. McCORMACK, CLERK
By: [Signature] DEP CLERK

THOMAS PAT HARPER and TPH FARMS, LLC

PLAINTIFFS

v.

Case No. 2:18-cv-152-BRW

THE TRAVELERS INDEMNITY COMPANY
OF AMERICA

DEFENDANT

NOTICE OF REMOVAL

Travelers Indemnity Company of America, under 28 U.S.C. §§ 1332, 1441, and 1446, removes the action styled *Thomas Pat Harper and TPH Farms, LLC v. The Travelers Indemnity Company of America* from the Circuit Court of Phillips County, Arkansas, to the United States District Court for the Eastern District of Arkansas, Eastern Division. As grounds for removal, Travelers states:

1. On October 1, 2018, Thomas Pat Harper and TPH Farms, LLC (collectively referred to as “TPH”) filed their complaint in the Circuit Court of Phillips County, Arkansas, where it was assigned Case No. 54CV-18-266. TPH seeks damages, statutory penalties, and attorneys’ fees based on an alleged failure to pay insurance benefits by Travelers.

2. As explained more fully below, this Court has original jurisdiction under 28 U.S.C § 1332 because complete diversity of citizenship exists between TPH and Travelers and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

3. Complete diversity of citizenship exists between TPH and Travelers under 28 U.S.C. §§ 1332(a) and 1332(c).

4. TPH alleges that Mr. Harper is a citizen of Arkansas. See Compl. ¶ 1.

5. TPH alleges that TPH Farms, LLC is a citizen of Arkansas. *See* Compl. ¶ 1.

6. Travelers is a Connecticut corporation with its principal place of business in Hartford, Connecticut. Therefore, Travelers is a citizen of Connecticut. 28 U.S.C. § 1332(c).

7. There is complete diversity of citizenship.

AMOUNT IN CONTROVERSY

8. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as required for original jurisdiction in this Court under 28 U.S.C. § 1332(a).

9. TPH alleges that the insured Pivot was “totally destroyed by heavy winds on or around July 20, 2018.” *See* Compl. ¶ 5. The Pivot was insured for \$80,000.00, and Travelers paid the actual cash value of \$27,500.00. *See* Compl. ¶ 11. TPH is seeking \$52,500.00, plus an additional 12% penalty and attorneys’ fees pursuant to Ark. Code Ann. § 23-79-208. *See* Compl. ¶¶ 11, WHEREFORE. The penalty, as well as attorneys’ fees of up to 40%, are includable in the amount in controversy. *Peacock & Peacock, Inc. v. Stuyvesant Ins. Co.*, 332 F.2d 499, 502 (8th Cir. 1964); *Knowles v. Standard Fire Ins. Co.*, No. 4:11-CV-04044, 2013 WL 3968490, at *6 (W.D. Ark. Aug. 2, 2013); *see also Capitol Life & Acc. Ins. Co. v. Phelps*, 76 Ark. App. 428, 434–35, 66 S.W.3d 678, 682 (2002).

10. Although Travelers disputes that TPH is entitled to any damages or relief at all, the amount in controversy sought by TPH exceeds \$75,000.00, exclusive of interest and costs.

REMOVAL PROCEDURE

11. Pursuant to 28 U.S.C. § 1446(a), Travelers has attached as exhibit 1 a copy of all process, pleadings, and orders served upon it.


12. Travelers was served with the complaint and summons on October 5, 2018. This removal, therefore, is timely under 28 U.S.C. § 1446(b).

13. Travelers will give written notice of the filing of this Notice of Removal and will file a copy of this notice with the Clerk of the Circuit Court of Phillips County, Arkansas, as required by 28 U.S.C. § 1446(d).

14. Because this Notice of Removal is neither a responsive pleading nor a motion under Rule 12 of the Federal Rules of Civil Procedure, Travelers has not waived the right to assert any applicable defenses merely by removing this action from state court. After removal of a case from state court to federal court, the action is governed by the Federal Rules of Civil Procedure. *Nationwide Engineering & Control Systems, Inc. v. Thomas*, 837 F.2d 345, 348 (8th Cir. 1988); Fed. R. Civ. P. 81(c)(1). Federal Rule of Civil Procedure 12 provides that every defense to a claim for relief in any pleading shall be asserted in the responsive pleading or by motion. *See* Fed. R. Civ. P. 12(b). Travelers did not file a responsive pleading or a motion asserting defenses in the Circuit Court of Phillips County, Arkansas.

WHEREFORE, The Travelers Indemnity Company of America removes this case from the Circuit Court of Phillips County, Arkansas, and requests that this Court exercise jurisdiction over the subject matter.

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas 72201
(501) 379-1700 (telephone)
(501) 379-1701 (facsimile)
ryounger@qgtlaw.com

By: 

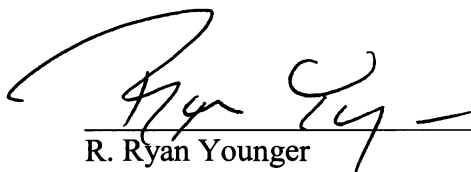
E. B. Chiles IV, Ark. Bar No. 96179
R. Ryan Younger, Ark. Bar No. 2008209

*Attorneys for Travelers Indemnity Company of
America*

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October 2018, a copy of the foregoing was served by United States mail, postage prepaid, upon the following:

Louis A. Etoch
Etoch Law Firm
P.O Box 100
Helena, Arkansas 72342



A handwritten signature in black ink, appearing to read "Ryan Younger", is written over a horizontal line.

R. Ryan Younger

ETOCH LAW FIRM

ATTORNEYS AT LAW
727 Cherry Street-P.O. Box 100
Helena, AR 72342

Phone: (870) 338-3591

Fax: (870) 338-7201

Louis A. Etoch
louis@etochlaw.com

Keith E. Clements
keith@etochlaw.com

John M. Landis
john@etochlaw.com

October 1, 2018

The Travelers Indemnity Company of America
c/o Corporation Service Company, reg. agent
300 Spring Building, Suite 900
300 S. Spring Street
Little Rock, AR 72201

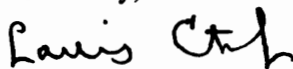
RE: Thomas Harper vs. Travelers
Phillips County Circuit Court No. 54CV-18-266

Dear Sir or Ma'am:

Enclosed please find a Summons and Complaint filed against The Travelers Indemnity Company of America. You must have an Answer to the Complaint filed within 30 days of your receipt of this correspondence.

A copy of this letter is being mailed to The Travelers Indemnity Company of America, attention Latisha Johnson, adjuster.

Sincerely,



Louis A. Etoch

LAE/kc

Enclosure

cc: The Travelers Indemnity Company of America
ATTN: Latisha Johnson, adjuster

VIA CERTIFIED,
RESTRICTED DELIVERY,
RETURN RECEIPT MAIL



IN THE CIRCUIT COURT OF PHILLIPS COUNTY, ARKANSAS
CIVIL DIVISION

THOMAS PAT HARMER and TPH FARMS, LLC

PLAINTIFFS

VS.

No. 54CV-18-2100

THE TRAVELERS INDEMNITY COMPANY OF AMERICA

DEFENDANT

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT: The Travelers Indemnity Company
of America
c/o Corporation Service Company,
reg. agent
300 Spring Building, Suite 900
300 S. Spring Street
Little Rock, AR 72201

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) – or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas – you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Louis A. Etoch
Attorney for Plaintiffs
P.O. Box 100
Helena, AR 72342

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

Additional notice: Interrogatories are attached.

Address of Clerk's Office:
Phillips County Court House
620 Cherry Street, Suite 206
Helena, AR 72342
870-338-5515
Fax: 870-338-5513

Lynn Stillwell, Circuit Clerk

By: Charity Delach
Deputy Clerk

Date: October 1, 2018



IN THE CIRCUIT COURT OF PHILLIPS COUNTY ARKANSAS
CIVIL DIVISION

THOMAS PAT HARPER and TPH FARMS, LLC

PLAINTIFFS

VS.

No. 54CV-18 *alldo*

THE TRAVELERS INDEMNITY COMPANY OF AMERICA

DEFENDANT

COMPLAINT

Come now the Plaintiffs, Thomas Pat Harper and TPH Farms, LLC. (collectively referred to hereafter as "Harper" or "Plaintiffs") by and through their attorneys, the Etoch Law Firm, and for their Complaint against the Defendant, The Travelers Indemnity Company of America (hereinafter referred to as either "Travelers" or "Defendant"), allege and state as follows:

1. Plaintiffs are citizens and residents of Phillips County, Arkansas, at all times relevant to this Complaint.

2. The Defendant, Travelers, is an entity in the business of selling insurance in Arkansas, and which did do business in the State of Arkansas at the time of the wrongs complained of herein and continues to do business in Arkansas.

3. The wrongs complained of herein arose out of the Defendant's conduct in doing business in the State of Arkansas. Plaintiffs' loss occurred in Phillips County, Arkansas.

4. The Defendant, for the consideration of a premium which was paid, issued and delivered to Plaintiffs a policy of farm/ranch casualty insurance (believed to be policy number 700-64A11563-TIA-18) to cover the Plaintiffs' farm and ranch property located at their farm in Phillips County, Arkansas. Said policy specifically covered Plaintiffs' 2580' Lindsay 2 Zimmatic Center Pivot (hereinafter referred to simply as "Pivot"). The total amount of insurance on the Pivot is \$80,000.00. The premium for this coverage was based upon an \$80,000.

FILED
At 12:50 Clock *A* 18

OCT 1 - 2018

LYNN STILLWELL
PHILLIPS COUNTY CIRCUIT CLERK
By *CP* D.C.

The policy was an Agribusiness Custom Policy prepared specifically for Plaintiffs. A copy of said Declarations Page and the coverage page of the policy from Travelers verifying coverage is attached hereto, marked Exhibit "A" and incorporated herein by reference.

5. Plaintiffs paid all premiums as they became due. Plaintiffs' Pivot described above and located at Plaintiffs' farm in Phillips County, Arkansas was totally destroyed by heavy winds on or around July 20, 2018. Said policy was in full force and effect at the time of the wind loss.

6. Plaintiffs promptly notified Travelers of their loss within the time and manner required by the terms of said policy and demanded payment of the \$80,000.00 pursuant to the terms of the policy. The actual cash value of the Plaintiffs' pivot at the time of the wind loss was in excess of \$80,000.00.

7. The policy requires that the claim be processed, and payment made within a reasonable period of time.

8. Plaintiffs provided Travelers all the information it requested, including a sworn proof of loss, promptly after the wind damaged their Pivot. Plaintiff has answered every question asked by Travelers and has fully cooperated with Travelers, their agents, and their representatives.

9. Plaintiffs have complied with all conditions of the policy.

10. Plaintiffs state they are entitled to recover the full \$80,000.00 for the loss of their Pivot pursuant to the terms of the policy and pursuant to ACA §23-88-101 titled Valued policy law, which states in pertinent part:

(a) In case of a total loss by fire or natural disaster of the property insured, a property insurance policy other than for flood and earthquake insurance shall be held and considered to be a liquidated demand against the company taking the risk for the full amount stated in the policy or the full amount upon which the company charges, collects, or receives a premium.

11. Although due demand has been made by Plaintiffs for the proceeds of the policy from Travelers, Travelers has failed, neglected and refused to pay the funds pursuant to the terms of the policy and within the time specified in the policy. Travelers, in an effort to mitigate their damages, has paid to Plaintiffs the sum of only \$27,500.00, which Travelers should rightfully be given credit towards the \$80,000.00 owed to Plaintiffs. Thus, the amount Travelers owes Plaintiffs is \$52,500.00. The Plaintiffs are entitled to pre-trial interest, twelve percent damages/penalties, together with a reasonable attorney's fee and their costs as provided in Ark. Code Ann. §3-79-208.

12. Plaintiffs request a trial by jury.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs, Thomas Pat Harper and TPH Farms LLC, pray for Judgment against the Defendant for \$52,500.00 to Plaintiffs for the damage to Plaintiffs' Pivot which was destroyed by the heavy wind; together with pre-trial interest, twelve percent penalty and damages, their cost and a reasonable attorney's fee; and for such other and further relief which may be proper

Respectfully submitted,

By: Louis A. Etoch
Louis A. Etoch (89030)
Etoch Law Firm
P.O. Box 100
Helena, AR 2342
(870) 338-3591

Exhibit A



One Tower Square, Hartford, Connecticut 06183

**SCHEDULED FARM PERSONAL PROPERTY
COVERAGE PART DECLARATIONS**
POLICY NO.: 700-6A411563-TIA-18**ISSUE DATE:** 07-31-18**INSURING COMPANY:****THE TRAVELERS INDEMNITY COMPANY OF AMERICA**

DECLARATIONS PERIOD: From 09-14-18 to 09-14-19 12:01 A.M. Standard Time at your mailing address shown on the Common Policy Declarations.

COVERAGE E-SCHEDULED FARM PERSONAL PROPERTY

Loc. No.	Item No.	Description of Property	Covered Causes of Loss	Ded. Amount \$	Limit of Insurance \$
COV E-SCHED MACHINERY					
001	001	JD TRACTOR M8410T #02472	SPECIAL	1,000	60,000
001	002	JD NOTILL DRILL M1590 #10184	SPECIAL	1,000	15,000
001	003	JD NOTILL DRILL M1590 #10185	SPECIAL	1,000	15,000
001	004	2580' LINDSAY 2 ZIMMATIC CENTER PIVOT	SPECIAL	1,000	80,000
COV E-GENERAL PROPERTY					
001	005	CONTENTS OF SHOP	SPECIAL	1,000	5,000
001	006	JD POWER UNIT	SPECIAL	1,000	3,000
001	007	JD POWER UNIT ON TRAILER	SPECIAL	1,000	5,000
001	008	ISUZU POWER UNIT	SPECIAL	1,000	5,000
001	009	CSA GENERATOR	SPECIAL	1,000	2,000
COV E-HARVESTING MACHINES					
001	010	2010 CASE IH 8120 COMBINE #YAG209575	SPECIAL	1,000	172,500
001	011	2015 MACDON FD75 HEADER #279770-15	SPECIAL	1,000	71,000

Winestock Construction Type:

FM = Frame; JM = Joisted Masonry; NC = Non-Combustible; MNC = Masonry Non-Combustible; MFR = Modified Fire Resistive; FR = Fire Resistive

*Foreign Objects in Machinery Coverage applies to this item.

**Value Reporting Endorsement applies to this item.

Hay, straw & fodder in the open is only eligible for fire and lightning, vehicles, windstorm or hail and theft. Grain in the open is only eligible for fire or lightning, vehicles or theft. Livestock and poultry are eligible for Basic and Broad causes of loss only.



7014 0150 0001 1194 5791



\$2.050

US POSTAGE
FIRST-CLASS
062S0005783787
72342



\$10.000

US POSTAGE
FIRST-CLASS
062S0005783787
72342



Etoch Law Firm
ATTN: Keith Clements
P.O. Box 100
Helena, AR 72342

The Travelers Indemnity Company of America
c/o Corporation Service Company, reg. agent
300 Spring Building, Suite 900
300 S. Spring Street
Little Rock, AR 72201

